



MEMORANDUM

To: PLANNING COMMISSION

Date: May 23, 2006

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: DEVELOPMENT AGREEMENT AMENDMENT DAA: 04-09: E. Dunne-Delco

REQUEST

The applicant is requesting an amendment to an approved development agreement to allow for an exception to the loss of 8 building allocations awarded for FY 2005-06 to the Jasper Park development located on the south west quadrant of the intersection of E. Dunne Ave. and San Benancio Way. Specifically the request is for a 3-month extension to the June 30, 2006 commencement of construction deadline.

RECOMMENDATION

Environmental Assessment: Not applicable

Application: Adopt resolution approving a 3-month extension.

Processing Deadline: October 27, 2006

BACKGROUND/CASE ANALYSIS

In July 2005, the City Council and Planning Commission approved of a 36 lot subdivision and development agreement for phase 1 of the Jasper Park development. Exhibit B of the development agreement required that 8 (FY 05-06) building permits be submitted for, and obtained by August 15, 2005 and September 30, 2005 respectively.

In February 2006 the City Council approved of an amendment to the development agreement allowing for a six month extension of time for "submitting and obtaining" 8 of the 36 building permits.

At the time of the February approval of the development agreement amendment the applicant did not foresee any problems with meeting the June 30th "commence construction" deadline within the development agreement.

On May 1, the building permits plan check was complete and the permits are ready to be issued pending the recordation of the final map. The final map recorded on May 12. On May 15, 9 building permits (one replacement unit) were issued for the project. Unfortunately, the applicant has been unable to begin preparing the site due to the moisture content in the soil. Attached is a letter from the applicant's soil engineer stating the site will likely not be dry enough for grading and compaction for another "few months." The applicant was able to meet the May 15 deadline for pulling the building permits but is currently uncertain about meeting the "commencement of construction" threshold due to their inability to prepare the site.

Due to the uncertainty in meeting the June 30 deadline, the applicant is requesting a 3-month extension of the June 30th "commencement of construction" date. The reason cited for the project delay is the continual rainy weather has delayed site access and preparation. The applicant is also worried about possible inability to secure (in a timely manner) grading equipment once the site dries out due to competing construction projects (see applicant's attached letter).

In accordance with section 18.78.125 of the Municipal Code, exceptions to the loss of building allocations may be granted if a project was delayed due to circumstances beyond its control and not a result of developer inaction. The late, substantial rain fall has made it difficult for builders to prepare sites for construction. Since all other development agreement dead lines have been met it is recommended that a 3-month extension of the "commencement of construction" deadline be granted.

RECOMMENDATION

Due to substantial amount of late rainfall this year, staff recommends approval of a three month extension to the "commence construction" date for the 8 building allocations awarded for FY 2005-06. Staff recommends that the Commission recommend Council approval of the Development Agreement amendment as shown in the modified Exhibit B attached to the Commission's approval resolution.

Attachments:

1. Applicant's letter
2. Soils engineer letter
3. Resolution No.

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-04-09 FOR APPLICATION MP-02-06: E. DUNNE-DEMPSEY (DELCO) TO ALLOW FOR A THREE MONTH EXTENSION OF TIME FOR COMMENCEMENT OF CONSTRUCTION FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RDCS COMPETITION. (APNS 817-11-067 & 817-11-072)

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 36 building allotments for application MP-02-06: E. Dunne-Dempsey (Delco); and

WHEREAS, in July 2004, the City Council approved the development agreement for application MP-02-06: E. Dunne-Dempsey (Delco); and

WHEREAS, the applicant is requesting to amend the approved development agreement to allow for a 3-month extension to the "commence construction" deadline for the 8 building allotments awarded for FY 2005-06; and

WHEREAS, the substantial rain experienced between February and March has delayed the site preparation work necessary to meet the "commence construction" deadline. The delay is not the result of developer inaction; and

WHEREAS, said development agreement amendment was considered by the Planning Commission at their regular meeting of May 23, 2006, at which time the Planning Commission recommended approval of development agreement amendment application DAA- 04-09: E. Dunne-Delco.

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

RESOLUTION NO.
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**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT AMENDMENT. The Planning Commission hereby recommends to the City Council adoption of the modified Development schedule for MP-02-06: E. Dunne-Dempsey (Delco); attached to this resolution as Exhibit B.

SECTION 2. EXCEPTION TO LOSS OF BUILDING ALLOTMENT. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Delays in the project processing have occurred due to weather conditions. Based on the findings required in Section 18.78.125 of the Municipal Code, the Planning Commission recommends approval of the development agreement amendment to allow for a three month extension of time, or Exception to Loss of Building Allotment.

**PASSED AND ADOPTED THIS 23rd DAY OF MAY 2006, AT A REGULAR MEETING
OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

RALPH LYLE, Chairman

EXHIBIT "B"

DEVELOPMENT SCHEDULE

MP-02-06: E. DUNNE – DEMPSEY / MC-04-12: E. DUNNE - DELCO
FY 2005-2006 (8 units) 2006-07 (13 units), FY 2007-08 (5 units), FY 2008-09 (8 units)

I. SUBDIVISION AND ZONING APPLICATIONS	
Applications Filed:	October 14, 2004
II. SITE REVIEW APPLICATION	
Application Filed:	October 14, 2004
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	
FY 2005-06 (8 units)	July 30, 2005
FY 2006-07 (13 units)	July 30, 2006
FY 2007-08 (5 units)	July 30, 2007
FY 2008-09 (8 units)	July 30, 2008
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 2005-06 (8 units)	February 15, 2006
FY 2006-07 (13 units)	August 15, 2006
FY 2007-08 (5 units)	August 15, 2007
FY 2008-09 (8 units)	August 15, 2008
V. BUILDING PERMITS	
Obtain Building Permits	
FY 2005-06 (8 units)	May 15, 2006
FY 2006-07 (13 units)	September 30, 2006
FY 2007-08 (5 units)	September 30, 2007
FY 2008-09 (8 units)	September 30, 2008
Commence Construction:	
FY 2005-06 (8 units)	<i>September 30, 2006</i> June 30, 2006
FY 2006-07 (13 units)	June 30, 2007
FY 2007-08 (5 units)	June 30, 2008
FY 2008-09 (8 units)	June 30, 2009

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 17 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

LAPIDUS AND ASSOCIATES
REAL ESTATE DEVELOPMENT PLANNING

991 SOLANA COURT, MOUNTAIN VIEW, CA 94040
PHONE: 650-949-1529 FAX: 650-383-5007
DONLAPIDUS@EARTHLINK.NET

PLANNING DEPT.

APR 27 2006

CITY OF MORGAN HILL

April 20, 2006

Joan Moore, Planning Technician
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037-4128

Project: Jasper Park, MP-02-06: E. Dunne-Delco (Dempsey)
Subject: Request for an Extension of Time, Exception of Loss of Building Allocation

Dear Joan,

Thank you for the information you sent me on April 18, 2006 defining the term "commence of construction" as used in the subject project's Development Agreement and the application and process requirements for an Extension of Time.

DeNova Homes will be constructing the homes at Jasper Park as their part of a joint venture with Delco Builders. DeNova Homes has given me the responsibility to process the remaining entitlements and to make sure the project stays on schedule. To date, we have complied with the required schedule and hope to commence construction prior to June 30, 2006 (required date).

However, a major issue has come up that may cause us delays beyond our control. As you know, the rainy weather has continued far beyond the normal season and we are uncertain whether or not it will continue. Once the rains stop, we may be delayed 30 to 45 days while the site sufficiently dries out. Additionally, as a result of the late winter, all the builders will be competing for the grading work. Labor and equipment may not be as available as we would like and we may have to wait to get a crew. We are only asking for an extension of time for Phase I (9 lots). Once we complete Phase I, future phases should fall into place and be started and completed in a timely manner.

Therefore, we hereby request the City Council to grant our request for a 90-day extension of time for Phase I, until September 30, 2006, to commence construction. To facilitate this request we are enclosing the following information:

1. A Uniform Application with required information; and
2. A \$2350.00 check for the processing fee.

For reference, the approved schedule and our response are as follows:

1. Subdivision and Zoning Applications:
Applications filed 10/14/04

2. Site Review Application:
February 16, 2006 the ARB gave their final approval of the project.
3. Final Map Submittal (Required by 7/30/05):
We submitted our Final Map for Phase I (9 lots) in a timely manner and the City Council approved it on December 7, 2005.
4. Building Permit Submittal (Required by 2/15/06):
We submitted applications for Building Permits on February 14, 2006.
5. Building Permits (Required by 5/15/06):
Since ARB approval we have been working diligently with staff and expect to receive building permits for Phase I (9 homes) and possibly Phase II (13 homes) prior to May 15, 2006.

Commence Construction (Existing, starting date required by 6/30/06)
Proposed is September 30, 2006.

If you have any questions or need additional information, please contact me immediately and we will respond accordingly. Thank you again for your time and consideration.

Sincerely,



Don Lapidus

Cc: Jim Rowe, Terry Linder, Bob Weiss, Steve Berch, Phil Rowe, Vince Burgos

May 16, 2006

Mr. Don Lapidus
Lapidus & Associates
991 Solana Court
Mountain View, CA 94040

Re: Soil Moisture Conditions
Jasper Park Residential Development, Morgan Hill, California
SFB Project No.: 155-31

Mr. Lapidus:


In accordance with the request of DeNova Homes, Stevens, Ferrone & Bailey Engineering Company, Inc. (SFB) performed below grade, in-situ, moisture testing at the Jasper Park site in Morgan Hill. The moisture testing was performed on May 3, 2006, using a nuclear gauge at eight different locations throughout the site. At each location, the testing was performed at the ground surface, 6 inches below the ground surface, and 12 inches below the ground surface. The results of the testing showed that the upper 6 inches of onsite soils are moderately moist; however below a depth of about 6 inches, the soils are nearly saturated. At depths below 12 inches, the majority of the tests showed that the soils were saturated. It is impossible to properly compact nearly saturated to saturated soils.

Based on the results of our testing and experience, we recommend grading at the site be postponed until in-situ moisture testing shows that the soils are damp to moist so that compaction can be achieved. Under the current subsurface conditions, it is our opinion that a few months of warm, dry weather will sufficiently dry the soils to the point where compaction can be achieved.

If you have any questions or need additional information, please call us.

Sincerely,

**Stevens, Ferrone & Bailey
Engineering Company, Inc.**


Kenneth C. Ferrone, P.E., G.E., C.E.G.
Civil/Geotechnical Engineer
Certified Engineering Geologist

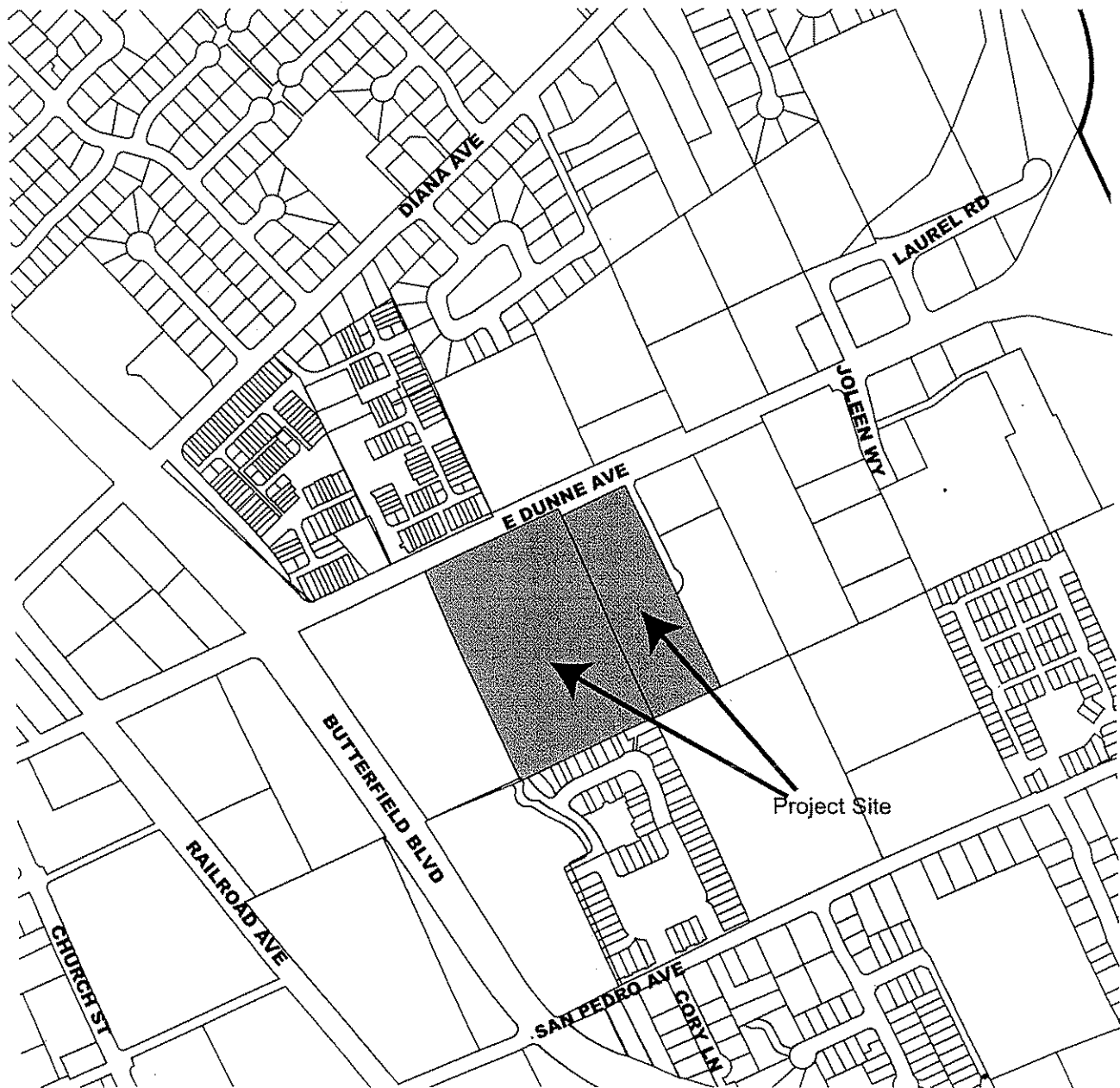


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Copies: Addressee (2)

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FAX 916.851.0223

21860 Rosehart Way
Salinas, CA 93908
TEL 831.757.2201
FAX 831.757.2202



Project Site

Not to Scale



CITY OF MORGAN HILL

Prepared by Community Development Department

VICINITY MAP

ZA-04-21 / SD-04-17 / DA-04-09:

E. DUNNE-DELCO

APNS 817-11-067 & 072

